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July 29, 2002

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Cambridge Electric Light Company, D.T.E. 01-94
Western Massachusetts Electric Company, D.T.E. 01-99

Dear Secretary Cottrell:

On July 25, 2002, Cambridge Electric Light Company ("Cambridge") and Western Massachusetts Electric Company ("WMECo") (the "Companies") filed a Motion and Supporting Affidavits requesting that the Department of Telecommunications and Energy ("Department") re-open the record in these proceedings, consider additional information and make an additional finding relating to the treatment of excess decommissioning funds. The Department should deny the Companies' requested treatment of excess decommissioning funds.

I. Background

On November 2, 2001, the Companies filed petitions with the Department of Telecommunications and Energy ("Department") pursuant to G. L. c. 164, §§ 1A, 1G, 76, 94, and 94A, to amend the existing power contract obligations with Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"). The Companies asked the Department to approve (1) an amendatory agreement between them and Vermont Yankee dated September 21, 2001 ("2001 Amendatory Agreement"), and (2) the recovery in the transition charges of (a) Vermont Yankee's ongoing cost-of-service, and (b) the costs and revenues from the power purchased from Vermont Yankee under the Amendatory Agreement. The Companies sought this action because of the pending sale by Vermont Yankee of its 510 megawatt nuclear power station, located in Vernon, Vermont, to Entergy Nuclear Vermont, LLC (" Entergy").

The Department held an evidentiary hearing on February 28, 2002. After review of the evidence, by order dated June 4, 2002, the Department found that the buyout is in the public interest and consistent with the requirements of G. L. c. 164, § 1G(d)(2)(ii). Therefore, the

Department approved the 2001 Amendatory Agreement.[1]

The 2001 Amendatory Agreement approved by the Department provided for a sharing of excess funds remaining in the decommissioning fund between Entergy and Vermont Yankee. On July 15, 2002, the Vermont Public Service Board ("Vermont Commission") issued an order rejecting the sharing provisions and instead required that after the completion of decommissioning, Entergy must return all excess money in the decommissioning fund that represents contributions made by ratepayers and growth from contributions made by ratepayers.

According to the Companies' Motions, Entergy is unwilling to close the transaction in a manner consistent with the terms of the Vermont Commission's order. As a result, the Companies and other joint owners have agreed that Cambridge and WMECo would each receive a payment of $83,333 at the sale closing in exchange for an assignment to Entergy of the ratepayers' right to receive excess decommissioning funds. The Companies have filed motions to reopen these proceedings and approve this new "Liquidation Agreement" which in effect amends both the 2001 Amendatory Agreement and the Vermont Commission's orders.

II. Standard of Review

The Department's procedural rule on reopening hearings, 220 C.M.R. § 1.11(8), states "[n]o person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause." *NYNEX* D.P.U. 96-68, pp. 9-10.[2] "Good cause for purposes of reopening has been defined as a showing that the proponent has previously unknown or undisclosed information regarding a material issue that would be likely to have a significant impact on the decision. *Id. Machise v. New England Telephone and Telegraph Company*, D.P.U. 87-AD-12-B at 4-7 (1990); *Boston Gas Company*, D.P.U. 88-67 (Phase II) at 7 (1989); *Tennessee Gas Pipeline Company*, D.P.U. 85-207-A at 11-12 (1986).

The Department has stated that "post-hearing evidentiary submissions should be limited to updates and should not include substantial changes." *Berkshire Gas Company*, D.P.U. 90-121, at 15 (1990). The Department has further stated that updates include routine, anticipated, verifiable changes such as property tax updates or uncontested billing and related adjustments. *Berkshire Gas Company*, D.P.U. 90-121, at 15-16 (1990); *Bay State Gas Company*, D.P.U 89-81, at 48 (1989).

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[1] During the proceeding, the Attorney General raised concerns regarding the sharing of excess decommissioning trust funds. The Companies, however, addressed these concerns by agreeing to pass the benefits of the transaction to their customers. The separate agreements were attached to a letter from the Attorney General filed with the Department indicating his intention not to file a brief in this matter.

[2] Although the Companies have filed their requests pursuant to 200 C.M.R. §1.11(7), the Department's rules also provide that if a motion to reopen a hearing is allowed, the docket will be renoticed and deadlines will be set for motions to intervene and for any additional motions. *Nextel* D.P.U. 95-59-A , p. 6 (1996). *Braintree Electric Light Company*, D.P.U. 90-263, pp. 22-25 (1991). *See* 220 C.M.R. § 1.11 (8) (requiring a hearing on the new evidence not less than five days after renotice).

III. The Department Should Order New Hearings On The Revised Vermont Yankee Sale Agreement

The Companies have not established good cause for the purpose of reopening the record to admit only the affidavit and make the requested additional factual finding without further proceedings. The Companies seek to amend the transaction the Department approved in its June 4, 2002 order. The proposed changes are not routine updates previously unknown, but rather constitute a material change in the terms of the proposed sale of Vermont Yankee requiring additional evidentiary hearings into whether the Liquidation Agreement is in the public interest.

During the February evidentiary hearings it was not necessary to delve into the assumptions contained in the Vermont Yankee decommissioning plan and trust fund requirements because the customers of all of the joint owners were treated in the same manner. They are still treated in the same manner by the Vermont Commission's recent decisions approving the sale. However, Cambridge and WMECo now propose to change the approved sale terms to provide for different treatment for Vermont and non-Vermont ratepayers in regards to decommissioning. The Companies now each propose to return $83,333 to their ratepayers rather than returning any excess decommissioning funds at the time the Station is decommissioned. The Companies now maintain that (1) it is highly doubtful there will be any excess decommissioning funds at the time of the Station is decommissioned; and (2) if excess decommissioning funds were to exist at decommissioning in 2042 at an estimated amount of $100 million, the Liquidation Payment of $83,333 to present-day payment customers is sufficient for the Department to waive the customers' right to future excess decommissioning proceeds.

There has been insufficient support for these statements in the record, however, and no evidence that the company employees are even qualified to make such statements, projections or estimates.[3] Discovery and cross-examination are necessary to determine if these claims have merit and, if so, whether modification to the terms of the sale approved in the Department's June 4 order are in the public interest and otherwise in compliance with the law. *See* 18 C.F.R. §§35.32(a)(6) and (7)(excess decommissioning funds to be returned to customers). Department precedent clearly states that "it would be fundamentally unfair to admit the [affidavits] without the opportunity for cross-examination" for the purpose of securing an immediate change in the terms of the Department's approval. *See Payphone Inc.*, D.P.U. 90-171, p. 56 (1991). The Department should reject the Companies' motions insofar as they requests approval of the Liquidation Agreement prior to evidentiary hearings and a determination of the public interest.

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[3] There has been no showing by the Companies that these employees have the expertise to form an opinion for decommissioning plans or have ever testified on decommissioning costs.

IV. The Department Should Approve The Transaction If Stockholders Assume The Risk

The Attorney General has a separate agreement with both Companies governing the payment of excess decommissioning funds that is supported by the rulings of the Vermont Commission.[4] (orders dated, 6/13/02, 7/11/02 and 7/15/02). The Companies cannot change this agreement unilaterally and the agreement is a separate and legally enforceable document. The Attorney General is agreeable to an amendment to this agreement, however, so long as the amendment does not distort the intent of the agreement. The Companies' proposal conflicts with this agreement.

If, as the Companies assert, "it is highly doubtful there will be any excess decommissioning funds at the time of the of decommissioning," then stockholders should be willing to assume this risk in return for the same $83,333 payment they are offering to customers. As an alternative to holding new hearings, the Attorney General recommends that the Companies be allowed to retain the proposed buyout as compensation for assuming the risk of returning to Massachusetts customers the prorated share of any decommissioning fund excess. The Companies should be allowed to accept the Liquidation payment, as long as at the time the decommissioning costs are known and are to be shared with Vermont consumers, the Companies return the appropriate amount, if any, that would have been returned to Massachusetts customers. If stockholders are willing to assume the same "highly advantageous" arrangement they offer to customers, then there is no reason to reopen this proceeding and the sale of Vermont Yankee can proceed. If the Companies are correct in their assumptions that the possibility of excess decommissioning funds is "highly doubtful and speculative," the payment of the Liquidation amount should be more than sufficient to compensate them for any ongoing investment risk.

WHEREFORE, the Attorney General requests that:

1. The Department deny the Companies' proposed request to liquidate customer claims to excess decommissioning funds.

(B) The Department renotice and schedule evidentiary hearings on the proposed Liquidation Agreement.

3. Or, in the alternative, the Department should order that the Companies may keep the Liquidation Payments as long as the Companies agree to guarantee the payment to Massachusetts customers of their pro rata share of any excess decommissioning funds as granted to Vermont customers by the Vermont Public Service Board; and,

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[4] The Attorney General and Companies entered into a separate and enforceable side agreement regarding decommissioning funds. This agreement was not presented for Department approval as part of this process and therefore is not subject to modification by the Department.

4. The Department grant such further relief as is just and proper.

RESPECTFULLY SUBMITTED

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